

Exhibit L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1	UNITED STATES OF AMERICA, CALIFORNIA,)	
2	COLORADO, CONNECTICUT, DELAWARE, DISTRICT)	
3	OF COLUMBIA, FLORIDA, GEORGIA, HAWAII,)	
4	ILLINOIS, INDIANA, IOWA, LOUISIANA,)	
5	MARYLAND, MASSACHUSETTS, MICHIGAN,)	
6	MINNESOTA, MONTANA, NEVADA, NEW JERSEY,)	
7	NEW MEXICO, NEW YORK, NORTH CAROLINA,)	
8	OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS,)	
9	VIRGINIA, WISCONSIN,)	
10	Ex Rel. CATHLEEN FORNEY)	
11	Plaintiffs,)	Civil Action No.
12	-v-)	5:15-cv-6264-EGS
13	MEDTRONIC INC.,)	
14	Defendant.)	

VIDEOTAPED DEPOSITION OF CATHLEEN FORNEY

Lancaster, Pennsylvania

Tuesday, November 14, 2017

Reported by:

Gail L. Inghram Verbano,

BA, CRR, CLR, RDR, CSR-CA (No. 8635)

Job No. 133496

1 November 14, 2017

2 9:08 a.m.

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6
7 Videotaped deposition of CATHLEEN
8 FORNEY, held at the offices of BARLEY SNYDER,
9 LLC, 126 East King Street, Lancaster,
10 Pennsylvania, before GAIL INGHAM VERBANO,
11 Registered Diplomate Reporter, Certified
12 Realtime Reporter, Certified Shorthand
13 Reporter-CA (No. 8635) and Notary Public in and
14 for the Commonwealth of Pennsylvania.
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2
3 A P P E A R A N C E S:
4

5 Attorneys for Plaintiffs:

6 LAW OFFICES OF SUSAN L. BURKE

7 1611 Park Avenue

8 Baltimore, Maryland 21217

9 BY: SUSAN BURKE, ESQ.
10
11
12
13

14 Attorneys for Defendants:

15 ROPES & GRAY

16 Prudential Tower

17 800 Boylston Street

18 Boston, Massachusetts, 02199

19 BY: KIRSTEN MAYER, ESQ.

20 MITCHELL STROMBERG, ESQ.
21
22

23 ALSO PRESENT:

24 KATHRYN WOZNY, In-House Counsel, Medtronic

25 ADOLPH GREEN, Legal Videographer

1 CATHLEEN FORNEY

2 THE VIDEOGRAPHER: This is the start
3 of tape labeled No. 1 of the videotaped
4 deposition of Cathleen Forney, in the
5 matter of Cathleen Forney V. Medtronic,
6 Inc. in the United States District Court
7 for the Eastern District of Pennsylvania,
8 Case No. 5:15-CV-6264-EGS.

9 This deposition is being held at 126
10 East King Street, Lancaster, Pennsylvania,
11 on November 14th, 2017, at approximately
12 9:08.

13 My name is Adolph Green from TSG
14 Reporting, Inc. and I am the legal video
15 specialist. The court reporter is Gail
16 Verbano, in association with TSG
17 Reporting.

18 Will counsel please introduce
19 yourselves.

20 MS. MAYER: Kirsten Mayer for
21 Medtronic.

22 MR. STROMBERG: Mitchell Stromberg
23 for Medtronic.

24 MS. WOZNY: Kathryn Wozny on behalf
25 of Medtronic.

1 CATHLEEN FORNEY

2 MS. BURKE: Susan Burke for relator.

3 THE VIDEOGRAPHER: Will the reporter
4 please swear in the witness.

5 CATHLEEN FORNEY

6 called as a witness, having been duly sworn by
7 a Notary Public, was examined and testified as
8 follows:

9 EXAMINATION

10 BY MS. MAYER:

11 Q. Good morning, Ms. Forney. Could you
12 please tell us your full name for the record.

13 A. Cathleen Forney.

14 Q. Where do you live?

15 A. I live at 353 College Avenue,
16 Lancaster, Pennsylvania.

17 Q. Have you ever been deposed before?

18 A. I have not been deposed before.

19 Q. A deposition is -- what we're going
20 to do today in the deposition is I'm going to
21 ask you questions, and you're going to give me
22 answers to the questions. To make it easy for
23 the court reporter and the videographer, it's
24 going to be important for you to let me finish
25 my question before you answer the question.

1 CATHLEEN FORNEY

2 A. It was a reduction in force.

3 Q. Were you still working between
4 November 2011 and January 2012?

5 A. No.

6 Q. Okay. So your last day working at
7 Medtronic was at some point in November 2011?

8 A. Yes.

9 Q. Was it the beginning of the month or
10 toward the end of the month?

11 A. I'm thinking --

12 Q. Before or after Thanksgiving?

13 A. -- it was before. Yeah, earlier.

14 Q. So earlier, first half of the month,
15 approximately.

16 And you didn't work for anyone in
17 between mid-November, roughly, 2011 and when
18 you started the research coordinator position
19 at LGH in February 2012?

20 A. Correct.

21 Q. So in your -- let's turn back to
22 January 2007 to June 2009. I think you said
23 you were a continuum manager?

24 A. Yes.

25 Q. What is a -- what was a continuum

1 CATHLEEN FORNEY

2 permitting the witness and her counsel to
3 have a lunch break at 1 o'clock.

4 BY MS. MAYER:

5 Q. So in this case you've alleged that
6 when Medtronic performs a device check, they're
7 providing a kickback that violates a felony
8 federal law; correct?

9 A. Correct.

10 Q. And yet you yourself -- sorry,
11 strike that.

12 When was the first time you came to
13 believe that performing -- that having
14 Medtronic perform a device check was a
15 violation of law?

16 A. It was a process.

17 Q. When was the first time that you
18 came to the understanding that it was a
19 violation of law for Medtronic to provide a
20 device check?

21 MS. BURKE: Objection; asked and
22 answered.

23 THE WITNESS: After I left Medtronic
24 and took time to uncouple from 17 years --
25 almost 17 years of working for a company

1 CATHLEEN FORNEY

2 that I embarrassingly trusted everything
3 they told me to be accurate and
4 appropriate. And I was able to step back
5 and not be in the weeds of day-to-day
6 exhausting work but look 30,000 feet and
7 see all the mutually dependent activities
8 that I had asked -- been asked to perform
9 or to be trained on so that I could serve
10 customers at a very high, engaged,
11 personal level; and experienced the
12 Medtronic compliance system not work and
13 that districts are given the freedom to
14 conduct business however they want to be
15 successful, I realized that the company I
16 worked for and the work that I performed,
17 that there was a large component that was
18 inappropriate and all conducted ultimately
19 to influence and to secure that
20 quarter's -- as Dave Roberts would say,
21 "the most important quarter ever," the
22 implant numbers that were required of us,
23 and relationships and service helped to
24 sustain business in a changing world.

25 BY MS. MAYER:

1 CATHLEEN FORNEY

2 Q. So was it also after you left
3 Medtronic that you came to believe that
4 providing support for implants was also a
5 felony kickback violation and illegal through
6 this process that you've just described?

7 A. There are some implant procedures
8 that are extremely mature, over 50 years where
9 things have not changed, and the technical
10 expertise to conduct them is not what we
11 provide. It's just helping them belabor to get
12 their job done.

13 Occasionally there are new products
14 that come out that requires extra, additional
15 skill sets, that the FDA states when a
16 physician might have to do so many implants and
17 then they're signed off, but then they should
18 be technically competent; and it's a rare case
19 that technical expertise is needed to support a
20 successful implant with an experienced implant.

21 MS. MAYER: Motion to strike the
22 answer as nonresponsive.

23 BY MS. MAYER:

24 Q. My question was: It was after you
25 left Medtronic --

1 CATHLEEN FORNEY

2 MS. BURKE: Kirsten --

3 BY MS. MAYER:

4 Q. -- that you went through this
5 process that you've described for us that you
6 came to understand in your mind that supporting
7 implants was illegal; correct?

8 MS. BURKE: Kirsten, you cannot move
9 to strike an answer. You're being
10 argumentative. We object to you using --
11 even using that term, "motion to strike,"
12 to convey your dissatisfaction with the
13 answer.

14 And she's already answered the
15 question that you gave.

16 MS. MAYER: No more speaking
17 objections.

18 MS. BURKE: Then no more motions to
19 strike.

20 MS. MAYER: Susan.

21 BY MS. MAYER:

22 Q. Can you -- do you remember the
23 question?

24 A. Correct.

25 Q. Correct? And it was after you left

1 CATHLEEN FORNEY

2 Medtronic and went through this process that
3 you've discussed that you came to have the
4 understanding that you now have, that providing
5 Lean Sigma advice was also illegal; correct?

6 A. Correct.

7 Q. And the other conduct that you
8 allege in your complaint, in your First Amended
9 Complaint and your Second Amended Complaint in
10 this case, that you allege was illegal, you
11 came to understand that the conduct was illegal
12 in your mind all after you left Medtronic;
13 correct?

14 A. After I uncoupled from Medtronic;
15 correct.

16 Q. Which was after you left Medtronic?

17 A. Correct.

18 MS. MAYER: We can take a lunch
19 break now.

20 MS. BURKE: Hour?

21 THE VIDEOGRAPHER: We are going off
22 the record at 1:07.

23 (Luncheon recess taken from 1:07
24 p.m. to 2:21 p.m.)
25

1 CATHLEEN FORNEY

2 the United States and the Plaintiff States
3 prior to filing suit under seal other than
4 those 10 or 12 documents that we just
5 discussed?

6 A. Can you ask that question again,
7 please.

8 Q. Sure. Did you share any information
9 with the United States and the Plaintiff States
10 prior to filing suit in this case -- this
11 Complaint, Exhibit 2 -- other than the 10 or 12
12 documents that we just discussed?

13 A. I did not share anything prior.

14 Q. Okay. So nothing was shared with
15 the government prior to filing suit; it came
16 after?

17 A. Perhaps I'm not understanding the
18 question. I think the documents probably came
19 with the case.

20 Q. But you -- to the best of your
21 knowledge, you provided information to the
22 United States and Plaintiff States, the 10 to
23 12 documents, after the complaint was filed;
24 right?

25 A. Yes.

1 CATHLEEN FORNEY

2 Q. Okay. Did you -- when you shared
3 the 10 or 12 documents, did you provide any
4 other information to the United States and
5 Plaintiff States?

6 A. Not to my knowledge.

7 Q. Do you have reason to believe that
8 somebody provided additional information to the
9 government on your behalf after the Complaint,
10 Exhibit 2, was filed?

11 A. No.

12 Q. Did you -- do you know when you
13 provided the 10 or 12 documents to the
14 government?

15 A. I believe it was submitted in June
16 of 2015.

17 Q. And why do you believe it was
18 submitted in June of 2015?

19 A. I -- that's when I recall Susan
20 telling me she was submitting it.

21 Q. Okay.

22 MS. BURKE: I would just caution the
23 witness not to reveal attorney-client
24 communications.

25 BY MS. MAYER:

1 CATHLEEN FORNEY

2 Q. Is that June of 2015 or June of
3 2016? Like last year?

4 A. 2015.

5 Q. Okay. Other than the 10 or 12
6 documents that we've discussed, have you shared
7 any additional information about this case with
8 the government?

9 A. I was interviewed one day.

10 Q. Do you know when that interview
11 occurred?

12 A. I don't recall. I think it was the
13 spring.

14 Q. Of which year?

15 A. 2016.

16 Q. How long was the interview?

17 A. Part a day. I don't recall how many
18 hours.

19 Q. Was it one hour?

20 A. My guess is half a day.

21 Q. Who was present at that interview?

22 A. I don't recall their names.

23 Q. Was your counsel with you,
24 Ms. Burke?

25 A. Yes.

1 CATHLEEN FORNEY

2 Q. Other than the interview and the 10
3 or 12 documents that you provided in support --
4 that you provided that we've already discussed,
5 have you had any other -- have you shared any
6 other information with the government about
7 this case?

8 A. No.

9 Q. What was the substance of the
10 interview with the government? You can start
11 with, what were the topics that you discussed
12 with the government?

13 MS. BURKE: Object and instruct the
14 witness not to answer.

15 MS. MAYER: What's the basis?

16 MS. BURKE: That the United States
17 has not been noticed in this deposition,
18 and I believe that the United States has
19 the investigative and deliberative process
20 privilege that attaches to those relator
21 interviews.

22 MS. MAYER: Do you represent the
23 United States today, Ms. Burke?

24 MS. BURKE: They are the real party
25 in interest, and they are not presently

1 CATHLEEN FORNEY

2 represented because they were not -- the
3 deposition notice was not sent to them.

4 I do not know what position they
5 would take, but given their absence and
6 given they're the real party in interest,
7 I instruct my witness and my client not to
8 answer that question.

9 MS. MAYER: Are you claiming any
10 attorney-client privilege over that
11 communication?

12 MS. BURKE: With my client?

13 MS. MAYER: Yes.

14 MS. BURKE: Yes.

15 MS. MAYER: You're claiming that you
16 had an attorney-client privileged
17 communication with your client while the
18 United States was present?

19 MS. BURKE: I am claiming that the
20 question that you asked seeks to elicit
21 information shared during a meeting with
22 counsel for the United States, and counsel
23 for the United States has the right to
24 assert a privilege to protect that
25 meeting, and I believe we have the right,

1 CATHLEEN FORNEY

2 therefore, as well, to assert a privilege
3 to protect that meeting.

4 So I'm instructing my client not to
5 answer.

6 MS. MAYER: So I'm trying to
7 understand what the privilege -- the
8 nature of the precise privilege is that
9 you're asserting. I understand you're
10 asserting on behalf of the United States,
11 who is not your client, a deliberative
12 process privilege.

13 What I'd like to understand, Susan,
14 is whether you are asserting any other
15 privilege.

16 MS. BURKE: I'm asserting all
17 potential privileges at this point.

18 MS. MAYER: What's your --

19 MS. BURKE: As you know, I was not
20 aware until this morning that the United
21 States has not been noticed for this
22 deposition. The deposition notice, it
23 only came to my attention that it had not
24 been served on the United States, and so I
25 have not had time to -- so I have not had

1 CATHLEEN FORNEY

2 time to research all of the potential
3 privileges.

4 Normally, what happens is the United
5 States is noticed, and when they don't
6 show up, you assume they've waived all
7 privileges.

8 We have already asserted a joint
9 prosecution privilege, and so -- so at
10 this point in time, I'm instructing her
11 not to answer, and I'm asserting all
12 potential privileges to cover that
13 meeting.

14 MS. MAYER: So I understand your
15 position with respect to the United
16 States' invocation in theory of --

17 MS. BURKE: Potential. Potential
18 invocation.

19 MS. MAYER: I understand your
20 position with respect to the United
21 States' potential invocation of a joint
22 prosecution privilege, and you've also
23 mentioned a deliberative process
24 privilege.

25 MS. BURKE: And an investigative

1 CATHLEEN FORNEY

2 privilege.

3 MS. MAYER: Are you asserting an
4 attorney-client privilege over the
5 communication?

6 MS. BURKE: Yes.

7 MS. MAYER: What's the basis for
8 asserting an attorney-client privilege
9 over that interview?

10 MS. BURKE: The joint prosecution
11 privilege makes the communication a
12 privileged communication.

13 MS. MAYER: Your position is that if
14 you have a joint prosecution agreement
15 with the United States, that creates an
16 attorney-client privilege over that
17 interview?

18 MS. BURKE: Well, at this point, I'm
19 not sure what I would assert vis-a-vis --
20 if the United States had waived its
21 privileges had it been noticed and not
22 appeared and those privileges would have
23 been -- and they waived their privileges,
24 I'm not sure that I independently would
25 have asserted a privilege.

1 CATHLEEN FORNEY

2 The complexity arises because of the
3 lack of notice to the United States that
4 then puts me in a position that I don't
5 know what the United States will do and/or
6 what it has done.

7 So at this point in time, all I can
8 say is that if they waive the privileges,
9 I would waive the privileges.

10 MS. MAYER: But I guess I'm trying
11 to understand, do you believe that,
12 independent of the joint -- the potential
13 joint prosecution privilege, that you have
14 an attorney-client privilege in that
15 interview?

16 MS. BURKE: It turns -- the
17 privilege -- any privilege that attaches
18 turns on the United States' -- and the
19 United States' invocation of the
20 privilege. If they don't invoke a
21 privilege, then we won't invoke a
22 privilege.

23 MS. MAYER: So we served this
24 request for production for all
25 communications with the government in

1 CATHLEEN FORNEY

2 September. And you --

3 MS. BURKE: You're now referring
4 back to Exhibit 1?

5 MS. MAYER: I'm referring back to
6 Exhibit 1, and you responded that you
7 object because it calls for
8 attorney-client communications, work
9 product, joint prosecution, common
10 interest and other applicable privileges;
11 and you did not produce any communications
12 with the government; correct?

13 MS. BURKE: No, that's not correct.
14 We produced documents that had been
15 provided to the -- to the government.

16 MS. MAYER: Did you withhold any
17 communications to the government, Susan?

18 MS. BURKE: The material disclosure
19 and another follow-up submission.

20 MS. MAYER: And your basis for
21 withholding those was the government's
22 joint prosecution privilege?

23 MS. BURKE: As you see here, these
24 are the -- with respect to the production
25 of documents, those are all of the

1 CATHLEEN FORNEY

2 privileges that we invoked.

3 MS. MAYER: Well, but I'm asking you
4 today whether the joint prosecution and
5 common interest privilege was the reason
6 why you didn't produce those.

7 MS. BURKE: All the reasons that we
8 have here are the reasons that we didn't
9 produce.

10 MS. MAYER: So your position is that
11 the material --

12 MS. BURKE: Attorney-client, work
13 product, joint prosecution, common
14 interest privilege and any other
15 applicable privilege, doctrine, immunity,
16 statute, regulation, rule or restriction.

17 MS. MAYER: And do you believe that
18 anything other than the joint prosecution
19 and common interest privilege protects
20 those communications?

21 MS. BURKE: I do.

22 MS. MAYER: Which privileges,
23 independent of those, protect the
24 communications?

25 MS. BURKE: With all due respect, I

1 CATHLEEN FORNEY

2 have not prepared on this issue, and so
3 there's a lot of case law that speaks to
4 what has to be turned over and what
5 doesn't have to be turned over.

6 I did not review that in
7 preparation. This is not an oral
8 argument. This is not something where I
9 came ready to brief our legal position.

10 I'm happy to brief our legal
11 position. If you want to move to compel,
12 we can brief the legal position. I'm not
13 prepared today. I don't have the case law
14 at the ready, and I didn't come prepared
15 to do this.

16 This is a deposition of a witness.
17 We're making the witness available. If
18 you have any questions to her, I suggest
19 you use your time to question the witness,
20 and we can brief these issues later.

21 MS. MAYER: Did you check -- after
22 receiving this request for production of
23 documents, Susan, did you reach out to
24 attorneys for the United States and the
25 states to check whether they were invoking

1 CATHLEEN FORNEY

2 a common interest or joint prosecution
3 privilege to protect those disclosures?

4 MS. BURKE: Ms. Mayer, I'm not the
5 witness. I'm not the witness. I don't
6 have to answer your questions on record.

7 You're here -- if you want to ask
8 Ms. Forney any questions, let's proceed.
9 Otherwise, let's take a brief break if you
10 don't have any more questions for the
11 witness -- actually, I would like a bio
12 break at this point.

13 MS. MAYER: Yes, we can take a
14 break.

15 THE VIDEOGRAPHER: We are going off
16 the record at 3:07.

17 (Recess taken from 3:07 p.m. to
18 4:01 p.m.)

19 (Whereupon, a discussion was held
20 between counsel, off the video record, and
21 outside the presence of the witness.)

22 MS. MAYER: We have discussed the
23 matter of the privilege over Ms. Forney's
24 oral communications with the government in
25 this case, and the agreement we've reached

1 CATHLEEN FORNEY

2 Q. You think it's Chuck.

3 A. Yeah.

4 Q. Okay. So it's -- Kay Brotzman says,
5 "Good morning, Chuck. We have a pacer check in
6 the office on November 22 on Delores Neifert,
7 who is having a general change done. Can you
8 please make sure someone can be here to help us
9 out?"

10 Right? Do you see that?

11 A. Yeah.

12 Q. So is this the source of the
13 information in the chart that says patient --
14 in Exhibit 7 on page 19, that says, "Patient
15 DN, Lehigh Valley Cardiology Associates, Pacer
16 check, November 22, 2011"?

17 A. Say that again.

18 Q. Sure. Does -- is the Kay Brotzman
19 to Chuck Mertz email that is screenshotted in
20 Exhibit 88, page 01421 the source for your
21 allegation on page 19 of the Second Amended
22 Complaint, Exhibit 7, that patient DN at Lehigh
23 Valley Cardiology Associates had a Pacer check
24 on November 22, 2011?

25 A. No, these are two different items.

1 CATHLEEN FORNEY

2 Q. Okay. So what -- you said the
3 source for the --

4 A. So --

5 Q. -- information in this chart is
6 not --

7 A. -- this is the Pacer chart. This
8 would have come off the Google Calendaring
9 system, where this is the email.

10 Q. Okay.

11 A. So this individual -- oh, wait,
12 maybe it is. Hold on. She had a gen change.
13 So maybe in this case, it initiated with an
14 email, and then it got put on the calendar --
15 calendaring system, and this here looks like
16 it's more off the calendaring system. But this
17 would have been the request.

18 Q. Do you remember --

19 MS. BURKE: And let the record
20 reflect that "this here" the witness is
21 referring to Exhibit 7, page 19.

22 BY MS. MAYER:

23 Q. Okay. So turn to page 01422 of
24 Exhibit 8.

25 A. Wait, which is Exhibit 8?

1 CATHLEEN FORNEY

2 Q. The --

3 A. Email?

4 Q. -- Gmail account document.

5 A. 01428?

6 Q. 01422. It's the next page.

7 A. Oh, the next page, okay.

8 Q. This -- and the screenshot, the top
9 screenshot email, is an email from Cathy Jo
10 Leiby to me. Do you see that?

11 A. Yeah.

12 Q. And it says in the body of the
13 email, "I know Dave spoke to you regarding
14 Elsie Hilbert; they've decided they would like
15 her device interrogated sometime today. She is
16 in room 450 at St. Luke's Allentown."

17 A. Uh-huh.

18 Q. And the date of this email is a
19 little hard to see, but it looks like it's
20 11/16.

21 A. Yes.

22 Q. And if you look on Exhibit 7, the
23 Second Amended Complaint, right below the line
24 about patient DN is a line about patient EH,
25 St. Luke's Allentown, interrogation of device,

1 CATHLEEN FORNEY

2 November 16h, 2011.

3 A. Uh-huh.

4 Q. But this email wasn't the source of
5 your information on this?

6 A. This email could be the source. And
7 like I shared, then it would be put on the
8 calendar. So there's two places you can pull a
9 source from.

10 Q. And do you remember which you pulled
11 this from or --

12 A. I don't recall exactly which one.

13 Q. Okay. Okay.

14 A. But it's double-sourced.

15 Q. Okay. Do you know for sure it's in
16 both, or you just recall that?

17 A. We can look at some of the other
18 documents or pictures of the calendars, and
19 that would confirm.

20 Q. Okay. If you turn to the next page
21 in Exhibit 8 which is REL-01423, do you see
22 that?

23 A. Yep.

24 Q. It's a "Google Voice, to me." And
25 it's a voicemail that makes reference to Lehigh

1 CATHLEEN FORNEY

2 Valley Heart Specialists and a patient called
3 Michael Boyle?

4 A. Correct.

5 Q. And then you see the line below,
6 patient EH on page 19 of Exhibit 7 refers to a
7 patient MB and Lehigh Valley Cardiology
8 Associates.

9 Is this voicemail the source of that
10 allegation in the complaint?

11 A. Per my prior response, it could be
12 this email. Also it could be confirmed on a
13 calendar.

14 MS. MAYER: Okay. Can we mark
15 another exhibit? This is Exhibit 9.

16 (Forney Exhibit 9, Pictures of
17 Patient Information Posted to Google
18 Calendaring 11.11.11, Bates REL-1666 TO
19 1772, was marked for identification.)

20 BY MS. MAYER:

21 Q. I'm showing you what has been marked
22 as Exhibit 9. Do you recognize this?

23 A. Yes.

24 Q. What is it?

25 A. These are pictures from Google

1 CATHLEEN FORNEY

2 Calendar system.

3 Q. And did you produce this to the
4 government?

5 A. Yes.

6 Q. Do you -- how would I look through
7 this printout to try to find reference to the
8 events that you listed on page 19 of the second
9 amended complaint, Exhibit 7?

10 A. I'm not sure if --

11 Q. I will tell you, I haven't been able
12 to find them.

13 A. -- they all got copied.

14 But I would say a sample could be
15 here where I would open up an event and then
16 the details would populate. So you may not be
17 able to see it from this higher level, but if
18 there's a picture of an event that's open,
19 that's how you could read the details.

20 Q. So if I wanted to try to find
21 "Patient DN, Pacer check with Lehigh Valley
22 Cardiology Associates on November 22, 2011,"
23 should I be looking for these opened windows
24 like we see on REL-01667 of Exhibit 9 that has
25 notes about an ICD reprogramming for a

1 CATHLEEN FORNEY

2 G. Witmer? I should be looking for something
3 like that for a patient DN?

4 A. Yeah, it's hard to read the details.

5 My intent was to open each one of
6 these to provide the details from the calendar
7 view, and it may not all have copied.

8 Q. When you prepared this information
9 for your complaint in this case, did you still
10 have electronic -- when you were drafting that
11 original complaint to the case, did you still
12 have access to the electronic Google Calendar
13 records that -- some of which you printed off
14 here?

15 A. My access to the Google Calendar
16 ended in February of 2012, I believe.

17 Q. Okay. So did you prepare for the
18 Complaint the list of patient and device check
19 events that we see in the complaint after
20 February 2012?

21 A. Yes.

22 Q. So you relied on something other
23 than the electronic Google Calendar in order to
24 make the chart that we see on page 19 of
25 Exhibit 7; right?

1 CATHLEEN FORNEY

2 A. I relied on the pictures I took.

3 Q. Okay. Which are in Exhibit 9?

4 A. These are samples of them, yes.

5 Q. Are there more of these that you
6 have that are not included in Exhibit 9?

7 A. I don't know.

8 MS. MAYER: Susan, do you know
9 whether you produced all of the Google
10 Calendars that Ms. Forney collected?

11 MS. BURKE: I believe we did, both
12 in hard copy and electronic, but I can
13 double-check.

14 THE WITNESS: Yeah.

15 MS. MAYER: By "electronic," you
16 mean, like, a .pdf of this paper printout;
17 right?

18 MS. BURKE: I need to -- I cannot --
19 I cannot, as I sit here today, recall what
20 the format --

21 BY MS. MAYER:

22 Q. Okay. And so the -- so, Ms. Forney,
23 the information that we see in the chart on
24 page 19 in Exhibit 7 either came from the email
25 printouts that we discussed from Exhibit 8 or

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2 insurer?

3 A. No.

4 Q. So have we now covered all of the
5 information you have about -- in support of
6 your allegation that these providers in the
7 chart on page 19 of Exhibit 7 submitted claims
8 for the patients listed there to the Medicare
9 program?

10 MS. BURKE: Object to form.

11 THE WITNESS: Yes.

12 BY MS. MAYER:

13 Q. And so you don't -- you don't
14 actually know that patient AJ was a Medicare
15 beneficiary; right? AJ could have been a
16 private health insurance beneficiary; right?

17 MS. BURKE: Object to form.

18 THE WITNESS: The majority of
19 patients with pacemakers and medical
20 devices, high, high probability it's
21 Medicare, just due to the age of the
22 population that's implanted.

23 BY MS. MAYER:

24 Q. Right.

25 A. I can't say specifically if that

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2 patient was 50 years old and private insurance
3 or Medicaid or Medicare.

4 Q. Right. And the same is true for all
5 the patients listed on page 19 in that chart;
6 right?

7 A. Correct.

8 Q. Okay. Turning to paragraph 50 of
9 the Second Amended Complaint, Exhibit 7, on
10 page 20, is the source of the information that
11 we see about Palmerton and Quakertown and
12 Wind Gap, also the snapshotted emails and
13 records that we see in Exhibit 8 that we've
14 already discussed? And I can direct your
15 attention, for example, to page 01448 of
16 Exhibit 8.

17 A. Yes.

18 Q. So these -- do you have any
19 information about who these patients were or
20 what was done in Palmerton or Quakertown or
21 Wind Gap on these dates other than what appears
22 in Exhibit 8 on page 01448? Or elsewhere in
23 Exhibit 8?

24 A. So the device clinic at Palmerton on
25 11/30, a Medtronic individual would show up and

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2 do six device checks.

3 Q. Right. But other than what you see
4 here, you weren't at that clinic; right?

5 A. Correct.

6 Q. And you haven't talked to anybody
7 about what did or didn't happen at that clinic;
8 right?

9 A. On this date, no.

10 Q. Right. And so, hypothetically, all
11 six device checks could have canceled that day;
12 right?

13 A. Correct.

14 Q. And there's no information here
15 about insurance; correct? So, hypothetically,
16 all of these patients could have been self-pay;
17 correct?

18 A. Correct.

19 Q. I'd like to turn your attention to
20 paragraph 52 on page -- starts on page 21 of
21 the Second Amended Complaint. It's Exhibit 7.

22 Paragraph 52 on page 21 starts
23 listing names and addresses. Do you see that,
24 where the first one says, "California," there's
25 a colon, "James T. Heywood"? Do you see that?

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2 Complaint in this case?

3 A. Yes.

4 Q. Have you provided any documents to
5 the government in addition to the documents
6 referenced in either the original Complaint,
7 the First Amended Complaint or the Second
8 Amended Complaint?

9 A. Not to my knowledge.

10 MS. MAYER: I'd like to mark this as
11 Exhibit -- what are we up to now, 10?

12 (Forney Exhibit 10, Email
13 communication, 5-4-10, with attachment,
14 Bates MDTEPA-92769 to 778, was marked for
15 identification.)

16 BY MS. MAYER:

17 Q. Ms. Forney, I'm showing you what's
18 been marked as Exhibit 10. It's a document
19 that begins with Bates number MDTEDPA00092769.

20 Do you see this?

21 A. Uh-huh.

22 Q. It's an email from Brian Dye to
23 Patricia Meyer, copying you. Do you see that?

24 A. Yes.

25 Q. And the subject is -- and it's